



STATE BOARD OF EQUALIZATION

STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Draft

Date Amended:	Enrolled	Bill No:	AB 2922
Tax:	Administration	Author:	Simitian
Board Position:		Related Bills:	

BILL SUMMARY:

This bill would require the Office of Privacy Protection to create the State Personal Information Inventory. This bill would also require each state agency to provide to the Office of Privacy Protection a description of the general categories of records containing personal information within its system of records.

ANALYSIS

Current Law

Senate Bill 129 (Chapter 984, Statutes of 2000, Peace) added Article 7 (commencing with Section 350) to Chapter 4 of Division 1 of the Business and Professions Code, to create the Office of Privacy Protection in the Department of Consumer Affairs. The Office of Privacy Protection's primary purpose is to protect the privacy of individuals' personal information, in a manner consistent with the California Constitution, by identifying consumer problems in the privacy area and facilitating development of fair information practices. The Office of Privacy Protection informs the public of potential options for protecting privacy and avoiding misuse of personal information, makes recommendations for privacy policies to protect California consumers, and promotes voluntary nonbinding arbitration and mediation of privacy related disputes.

Section 1 of Article I of the California Constitution states:

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

The Information Practices Act, or IPA (commencing with Section 1798 of the Civil Code), provides that state agencies shall only maintain necessary personal information in their records, as specified, and shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains, with certain exceptions. The IPA is modeled after the Federal Privacy Act of 1974, and became effective in 1978.

Personal information may be disclosed pursuant to the Public Records Act, or PRA (commencing with Section 6250 of the Government Code), which provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record. Confidential information, as specified within each tax or fee program, is exempt from disclosure

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under the PRA and may not be released unless specifically authorized by the Governor or with the taxpayer's consent. The PRA is modeled after the Federal Freedom of Information Act, and became effective in 1968.

Proposed Law

This bill would add Section 353 to the Business and Professions Code to require the Office of Privacy Protection (OPP) within the Department of Consumer Affairs to create the State Personal Information Inventory (SPII). Section 353 would state that it is the intent of the Legislature to: (1) Create a central catalog that will allow the public to observe the general categories of personal information that are collected by the state, how the state uses such information, and the process by which individuals may access specific records in which they are identified; (2) Make the personal information in the catalog easily accessible by the general public; and (3) Have the regulations resulting from Section 353 have minimal impact on the resources of the state agencies and the OPP.

In addition, Section 353 would require that, by July 1, 2003, the OPP would develop the process and format for the reporting of categories of records containing personal information by state agencies, as specified in Section 11019.10 of the Government Code. The OPP, by March 1, 2004, would make the SPII available to the general public.

This bill would also add Section 11019.10 to the Government Code to require each state agency, by January 1, 2004, to provide to the OPP a description of general categories of records containing personal information within its system of records. This description would include, but is not limited to, all of the following:

- 1) The name and location of the system;
- 2) The categories of individuals on whom records are maintained in the system, including for example, agency employees, taxpayers, and holders of driver's licenses;
- 3) The categories of records maintained in the system, including, for example, payroll records, tax forms, and histories of vehicle code violations;
- 4) Each routine use of the records contained in the system, including the categories of users and purpose of each use;
- 5) The title and business address of the agency official who is responsible for the system of records;
- 6) The categories of sources of records in the system, including for example, employee time cards, taxpayers records, and law enforcement records;
- 7) Whether the records contained in the system are open to public access or restricted, and the nature of any restrictions; and
- 8) Known or foreseeable disclosures of the records contained in the system.

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Each state agency would be required to provide annual updates, by January 1 of each year, to the OPP specifying any changes to the information required under Section 11019.10, or indicating that there have been no changes.

Section 11019.10 would define the following terms to mean:

- 1) "Personal Information" means any information about an individual in any record, including, but not limited to, all of the following:
 - Name, address, telephone number, social security number, or other identifying information;
 - Education, financial, medical, or employment history;
 - Payroll and attendance records, retirement account information, disciplinary information, and other employment data;
 - Insurance information
 - Real estate records;
 - Business, professional, or driver's license information;
 - Tax information;
 - Criminal history.
- 2) "Record" means any file or collection of information about an individual that contains the individual's name, identifying number, symbol, fingerprint, or other identification assigned to the individual, and is maintained by a state agency with reference to a means of identification.
- 3) "System of records" means one or more records under the control of a state agency from which information is retrieved by the name of an individual or by an identifying number, symbol, or other identifying designation assigned to the individual.

Background

Senate Bill 129 (Chapter 984, Statutes of 2000, Peace) added Section 11019.9 to the Government Code, effective January 1, 2001, to require each state agency to enact and maintain a permanent privacy policy that includes, but is not limited to, the following principles:

- 1) Personally identifiable information is only obtained through lawful means;
- 2) The purposes for which personally identifiable data are collected are specified at or prior to the time of collection, and any subsequent use is limited to the fulfillment of purposes not inconsistent with those purposes previously specified;
- 3) Personal data shall not be disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the subject of the data, or as authorized by law or regulation;
- 4) Personal data collected must be relevant to the purpose for which it is collected;

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- 5) The general means by which personal data is protected against loss, unauthorized access, use modification or disclosure shall be posted, unless such disclosure of general means would compromise legitimate state department or state agency objectives or law enforcement purposes;
- 6) Each state department or state agency shall designate a position within the department or agency, the duties of which shall include, but not be limited to, responsibility for the privacy policy within that department or agency.

As required by Government Code Section 11019.9, the Board implemented a permanent privacy policy. It is the policy of the Board that information which can be identified with a particular person ("personally identifiable information") is only obtained through lawful means and that the collection, use, retention, disclosure, and destruction of such information is in compliance with state privacy laws. Personally identifiable information is collected by the Board for purposes of administering the tax and fee programs set forth in the Revenue and Taxation Code. Personally identifiable information regarding Board employees is also collected, for purposes of personnel administration. When the Board collects personally identifiable information, it provides the notice required by Civil Code Section 1798.17 of the IPA which includes the purposes for which the information is used. Any personally identifiable information that is collected must be relevant to the purpose for which it is collected. The Board's privacy policy is posted on the Board's web site.

COMMENTS:

1. **Sponsor and purpose.** This bill is sponsored by the author in an effort to provide citizens with a clear understanding of what information the state collects. According to the author, "There is no central location for individuals to learn about the types of files the government contains about them." The author cites instances where state agencies have sold personal information, such as information on birth and death certificates and licenses to private companies. According to the author, the state of Wisconsin maintains a similar inventory.

Additionally, the author noted that, there is an increase in public concern about privacy issues, as identity theft continues to be the fastest growing crime. According to the author, industry estimates indicate that between 50,000 and 70,000 Californians will be affected by identity crime this year.

2. **This bill would require that all state agencies provide to the OPP a description of the general categories of records containing personal information within its system of records.** This description would include the name and location of the system, categories of individuals, categories of records, categories of sources of records in the system, categories of uses and purpose of each use, records that are open to public access or restricted and the nature of any restrictions, and any known or foreseeable disclosures of records. Additionally, the system of records is defined as one or more records from which personal information is retrieved by the name of the individual or by an identifying number, symbol, or other identifying designation assigned to the individual.

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- 3. The Board sponsored legislation to limit the disclosure of sole proprietorship information.** Assembly Bill 1965 (Chapter 962, Statutes of 2000, Leach) was a Board-sponsored bill to address complaints from permit holders who did not want their names and addresses made available to direct mail marketers. Specifically, sole proprietors who worked from their homes had complained to both the Board and the Legislature about the public release of their home addresses. Effective January 1, 2001, AB 1965 amended Sections 1798.61 and 1798.75 of, and added Section 1798.69 to, the Civil Code to prohibit the release of names and addresses of sole proprietors who are registered with or are holding licenses or permits issued by the Board, except as necessary to verify resale certificates or administer the tax and fee provisions of the Revenue and Taxation Code, as specified. In addition, AB 1965 did not prohibit the release to, or limit the use by, any federal or state agency, or local government, of any data collected by the Board that is otherwise authorized by law.

COST ESTIMATE:

One time costs that may be incurred as a result of this bill could be significant. The Board could incur absorbable costs in providing annual updates. The Franchise Tax Board has indicated that their cost of compliance in providing information to the OPP would be \$48,000 initially, and absorbable thereafter.

REVENUE ESTIMATE:

This bill would not impact the state's revenues.

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